



PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION

445 TWELFTH STREET, S.W.

WASHINGTON, D.C. 20554

DA 03-4099

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LEAP WIRELESS INTERNATIONAL, INC., DEBTOR-IN-POSSESSION, SEEKS FCC CONSENT FOR THE ASSIGNMENT OF BROADBAND PERSONAL COMMUNICATIONS SERVICES LICENSES TO LEAP WIRELESS INTERNATIONAL, INC.

WT Docket No. 03-263

PLEADING CYCLE ESTABLISHED

Petitions to Deny Due:	January 23, 2004
Oppositions Due:	February 2, 2004
Replies Due:	February 9, 2004

Leap Wireless International, Inc., Debtor-in-Possession, and certain of its subsidiaries, as debtors in possession (collectively, "Leap DIP"),¹ have filed a series of applications pursuant to Section 310(d) of the Communications Act of 1934, as amended.² In these applications, the parties seek Commission consent to assign broadband Personal Communications Services ("PCS") authorizations from Leap DIP to the reorganized Leap Wireless International, Inc. ("Reorganized Leap") and certain of its subsidiaries ("Reorganized Subsidiaries").

I. THE TRANSACTION

Leap is one of the original Entrepreneur's Block PCS providers. Leap provides mobile telephony service, marketed under the Cricket brand name, to approximately 1.5 million customers. On April 13, 2003, Leap Wireless International, Inc. ("Leap") and certain subsidiaries filed voluntary petitions for protection under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Southern District of California in San Diego, California ("Bankruptcy Court").³ In accordance with the Commission's rules, Leap filed applications notifying the Commission of the involuntary assignment and transfer of control of its licenses to Leap DIP.⁴ The Bankruptcy Court has confirmed the plan of reorganization pursuant to which Leap DIP will be reorganized and emerge from bankruptcy.

¹ For a list of the Leap DIP subsidiaries involved in this transaction, see *infra* Part III.

² 47 U.S.C. § 310(d).

³ *Leap Wireless International, Inc., Cricket Communications, Inc., et al.*, Chap. 11 Case nos. 03-3470, 03-3535 (Bankr. S.D. Ca. 2003).

⁴ See ULS File Nos. 0001288952, 0001288949, 0001288938, 0001288919, 0001288915, 0001288909, 0001288894, 0001288888, 0001288884, 0001288873, 0001288866, 0001288853, 0001288855, 0001288849,

Upon its emergence from bankruptcy, all authorized and issued shares of Leap and Leap subsidiary common stock will be canceled, and Reorganized Leap and the Reorganized Subsidiaries will authorize new common stock. Post-reorganization, Reorganized Leap will indirectly own all of the issued and outstanding shares each Reorganized Subsidiary.⁵ Reorganized Leap's common stock will be distributed to Leap's creditors – 96.5 percent of Reorganized Leap's shares of common stock will be issued to certain Leap secured debt holders and the remaining 3.5 percent of issued and outstanding shares of Reorganized Leap's common stock will be transferred to a trust for the benefit of Leap's general unsecured creditors ("Creditor Trust"). Additional Leap assets, including some Commission licenses,⁶ also will be transferred to the Creditor Trust. The common stock of Reorganized Leap, which will be a publicly-traded company, will be widely dispersed among over 100 investors. The parties state that only three entities will hold more than 10 percent of the outstanding equity: Mark H. Rachesky, The Capital Group Companies, and Highland Capital. The parties allege that no shareholder or group of shareholders will be able to exercise control over Reorganized Leap's operations or determine the composition of the board of directors. The parties thus conclude that the officers and board of directors will be vested with actual control of Reorganized Leap.

II. SECTION 310(d) APPLICATIONS

The following applications seek consent for the assignment of PCS licenses that were granted pursuant to Part 24 of the Commission's rules. The applications have been assigned the file numbers indicated below:

<u>File Number</u>	<u>Licensee</u>	<u>Lead Call Sign</u>
0001546977 ⁷	Leap Wireless International, Inc., Debtor-in-Possession	KNLF520
0001527351	Cricket Licensee I, Inc., Debtor-in-Possession	KNLF488
0001527457	Cricket Licensee II, Inc., Debtor-in-Possession	KNLF898
0001527482	Cricket Licensee IV, Inc., Debtor-in-Possession	KNLG970
0001527498	Cricket Licensee XI, Inc., Debtor-in-Possession	WPOK587
0001527512	Cricket Licensee XIV, Inc., Debtor-in-Possession	KNLG280
0001527547	Cricket Licensee XV, Inc., Debtor-in-Possession	KNLF459
0001527566	Cricket Licensee XVI, Inc., Debtor-in-Possession	KNLF469
0001527585	Cricket Licensee XVII, Inc., Debtor-in-Possession	KNLF467
0001527595	Cricket Licensee XVIII, Inc., Debtor-in-Possession	KNLF466
0001527533	Cricket Licensee XIX, Inc., Debtor-in-Possession	KNLF460
0001527604	Cricket Licensee XX, Inc., Debtor-in-Possession	KNLG684

0001288845, 0001288841, 0001288793, 0001288834, 0001469522, 0001469511, 0001469533.

⁵ For further details regarding the transaction, see ULS File No. 0001546977.

⁶ Call Signs KNLG967 (BTA037 – Bemidji, MN), KNLG968 (BTA054 – Brainerd, MN), KNLG972 (BTA132 – Escaraba, MI), WPOK596 (BTA366 – Pueblo, CO), WPOK599 (BTA395 – Salem, OR), WPOK576 (BTA053 – Bozeman, MT), WPOK577 (BTA069 – Casper, WY), WPOK588 (BTA250 – Lewiston, ID); WPOK597 (BTA371 – Redding, CA). These authorizations are not included in the applications that are the subject of this public notice.

⁷ ULS File No. 0001546977 has been designated as the lead application, and all pleadings and other submissions filed in this matter that pertain generally to the transaction and not to a particular application will be available through this file number.

0001536587	Cricket Licensee (Albany), Inc. – fka Zuma/Albany, Debtor-in-Possession	WPOJ838
0001536565	Cricket Licensee (Columbus), Inc. – fka Zuma/Columbus, Debtor-in-Possession	WPOJ839
0001526967	Cricket Licensee (Denver), Inc., Debtor-in-Possession	KNLG213
0001527061	Cricket Licensee (Lakeland), Inc., Debtor-in-Possession	KNLF741
0001536572	Cricket Licensee (Macon), Inc. – fka Zuma/Macon, Debtor-in-Possession	WPOJ841
0001527176	Cricket Licensee (North Carolina), Inc., Debtor-in-Possession	KNLF653
0001527268	Cricket Licensee (Pittsburgh), Inc., Debtor-in-Possession	KNLH427
0001527331	Cricket Licensee (Reaunion), Inc., Debtor-in-Possession	KNLF487

III. DESIGNATED ENTITY AND ENTREPRENEURIAL ELIGIBILITY ISSUES AND WAIVER AND CONFIDENTIALITY REQUESTS

The proposed transaction includes the assignment of C and F Block PCS licenses to Reorganized Leap. The parties state that the licenses to be assigned include closed bidding and entrepreneurial licenses that are subject to transfer restrictions.⁸ Additionally, the parties are assigning some licenses that were issued with bidding credits and subject to installment payment financing. Leap claims that its total assets and gross revenues allow it to continue to hold its existing portfolio of restricted C and F block PCS licenses and avoid installment payment and bidding credit unjust enrichment, because its assets and revenues are a product of “natural growth” and are excluded from the caps on such assets and revenues.⁹ The parties acknowledge that Reorganized Leap exceeds the \$125 million and the \$500 million caps on assets and gross revenues, respectively.¹⁰ The parties allege, however, that these assets and revenues are the product of operation, business development or expanding services, or normal projected growth excludable under section 24.709(a)(2) of the Commission’s rules.¹¹

The parties claim that Reorganized Leap’s officers and board of directors will have actual control and will be the identifiable controlling interests of Reorganized Leap.¹² The parties acknowledge that the Directors of Reorganized Leap have attributable interests in business entities that could disqualify Reorganized Leap from its entrepreneur and designated entity status. The parties request that the Commission grant a limited waiver of its attribution rules to allow Reorganized Leap to exclude the assets and revenues of the business entities controlled by the members of Reorganized Leap’s Board of

⁸ The Commission’s Rules state that “[n]o assignment or transfer of control of a license for frequency Block C or frequency Block F won in closed bidding pursuant to the eligibility requirements of § 24.709 will be granted,” except when, among other things, “[t]he application for assignment . . . if filed after five years from the date of the initial license grant,” 47 C.F.R. § 24.839(a)(1), “[t]he proposed assignee . . . meets the eligibility criteria of or it hold other licenses for frequency blocks C and F,” *id.* § 24.839(a)(2), and “[t]he application for assignment or transfer of control is filed on or after the date the licensee has notified the Commission pursuant to § 24.203(c) that its five-year construction requirement has been satisfied.” *id.* § 24.839(a)(6). The parties state that some of the C and F block licenses implicated in the assignment applications are within five years of the initial grant and the five-year build-out notifications have been filed for some, but not all, of these licenses.

⁹ 47 C.F.R. § 24.709(a)(2).

¹⁰ *Id.* § 24.709(a)(1).

¹¹ *Id.* § 24.709(a)(2); Implementation of Section 309(j) of the Communications Act – Competitive Bidding, *Fifth Memorandum Opinion and Order*, 10 FCC Rcd. 403, 419-20 (1994).

¹² 47 C.F.R. §§ 1.2110(b), 24.709(b)(2).

Directors. The parties further request a waiver of any of the Commission's rules to the extent required to allow Leap to retain its licenses without the imposition of any conditions, payment obligations, or other requirement out of the ordinary course.

The parties also have requested that the gross revenues and assets of certain entities controlled by certain members of Reorganized Leap's Board of Directors be submitted confidentially to the Commission. The parties request that the asset and revenue information for some or all of the affiliates of James Dondero, Mark Rachesky, and Rajendra Singh be withheld from public inspection due to the highly proprietary nature of the information. The parties allege that the asset and revenue information at issue constitutes "trade secrets and commercial or financial information" exempted from disclosure under the Freedom of Information Act.¹³ The parties further argue that the financial information is irrelevant to Reorganized Leap's application, because it has requested a waiver of the Commission's attribution rules and because the parties acknowledge that absent a waiver the assets and revenues of its directors would render it ineligible for entrepreneur and designated entity status.

IV. GENERAL INFORMATION

The assignment applications referenced herein have been found, upon initial review, to be acceptable for filing. The Commission reserves the right to return any application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules or policies. Final action on these applications will not be taken earlier than thirty-one days following the date of this Public Notice.¹⁴

Interested parties must file petitions to deny no later than **January 23, 2004**. Persons and entities that file petitions to deny become parties to the proceeding. They may participate fully in the proceeding, including seeking access to any confidential information that may be filed under a protective order, seeking reconsideration of decisions, and filing appeals of a final decision to the courts. Oppositions to such pleadings must be filed no later than **February 2, 2004**. Replies to such pleadings must be filed no later than **February 9, 2004**. All filings concerning matters referenced in this Public Notice should refer to **DA 03-4099** and **WT Docket No. 03-263**, as well as the specific file numbers of the individual applications or other matters to which the filings pertain.

Under the Commission's current procedures for the submission of filings and other documents,¹⁵ submissions in this matter may be filed electronically (*i.e.*, by the Commission's Electronic Comment Filing System ("ECFS")) or by hand delivery to the Commission's Massachusetts Avenue location.

- **If filed by ECFS,**¹⁶ comments shall be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket number

¹³ 5 U.S.C. § 552(b)(4).

¹⁴ See 47 U.S.C. § 309(b).

¹⁵ See Implementation of Interim Electronic Filing Procedures for Certain Commission Filings, *Order*, FCC 01-345 (rel. Nov. 29, 2001); see also FCC Announces a New Filing Location for Paper Documents and a New Fax Number for General Correspondence, *Public Notice*, DA 01-2919 (rel. Dec. 14, 2001); Reminder Filing Locations for Paper Documents and Instructions for Mailing Electronic Media, *Public Notice*, DA 03-2730 (rel. Aug. 22, 2003).

¹⁶ See Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24,121 (1998).

referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

- **If filed by paper**, the original and four copies of each filing must be filed by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, S.W., Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

One copy of each pleading must be delivered electronically, by e-mail or facsimile, or if delivered as paper copy, by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (according to the procedures set forth above for paper filings) to: (1) the Commission's duplicating contractor, Qualex International, at qualexint@aol.com or (202) 863-2898 (facsimile); (2) Erin McGrath, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau, at erin.mcgrath@fcc.gov, or (202) 418-7447 (facsimile); (3) Kathy Harris, Mobility Division, at kathy.harris@fcc.gov, or (202) 418-7447 (facsimile); and (4) Rita Cookmeyer, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at rita.cookmeyer@fcc.gov, or (202) 418-0890 (facsimile).

Copies of the applications and any subsequently-filed documents in this matter may be obtained from Qualex International, in person at 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, via telephone at (202) 863-2893, via facsimile at (202) 863-2898, or via e-mail at qualexint@aol.com. The applications and any associated documents are also available for public inspection and copying during normal reference room hours at the following Commission office: FCC Reference Information Center, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554. The applications are also available electronically through the Commission's Electronic Comment Filing System (ECFS), which may be accessed on the Commission's Internet website at <http://www.fcc.gov>.

For further information, contact Erin McGrath, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau, at (202) 418-7240.

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